IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

MISC.CIVIL APPLICATION No 954 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JYOTIBEN KAPILBHAI DEVALIA

Versus

KAPILBHAI BHANUBHAI DEVALIA

Appearance:

1. Misc.Civil Application No. 954 of 2002

MR HARESH J TRIVEDI for Petitioner No. 1

MS NIRALI B MUNSHI for Respondent No. 1

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 16/01/2003

ORAL JUDGEMENT

Whether the hardship and inconvenience of deserted wife predominates the convenience of other litigant who is found to be the husband in matrimonial

proceeding in deciding where such legal proceedings should be conducted, taking out the same from its statutory destination, is the legal issue requires to be decided with utmost judicial wisdom. This is an application under sec. 24 of CPC for the transfer of Hindu Marriage Petition bearing No. 55 of 2001 from the Court of Civil Judge (SD) Jamnagar to the Court of Civil Judge (SD) Baroda.

The present petitioner is wife who married to the opponent at Baroda in 1991. Though it could not be borne out from the application but during the submissions, it is clear that out of this wed-lock, there are two children, a daughter aged about 9 years and son aged about 5 years. It appears that matrimonial relationship was in doldrums and ultimately the applicant wife reverted to parental home for about two years before from filing of this application. The applicant has also filed an application under sec. 125 of CrPC for the maintenance from the opponent-husband. It is also clear from the submissions made that minor son at present is with the applicant and minor daughter elder to son is with the opponent-husband.

As alleged in the application as a counter blast to the proceedings under sec. 125 of CrPC, husband opponent herein filed Hindu Marriage Petition No. 55/2001 for restitution of conjugal rights in the Court of Civil Judge (SD), Jamnagar.

It has been contended by the ld. advocate Mr. HJ Trivedi for the applicant that it is very difficult and inconvenient for the applicant to go to Jamnagar and attend the Hindu Marriage Petition pending before the Civil Judge (SD) Jamnagar. A heavy reliance has been placed on a decision of this court in the matter of Shilpa Hargovandas Patel vs. Dr. Vishnubhai Chaturbhai, as has been reported in 1999(3)GLR 2438. On the facts of that case, this Court came to the conclusion that an applicant wife was facing inconvenience and hardship to attend the Court at Bhavnagar and since the husband in that case was not likely to face greater hardship, the court directed the transfer of matrimonial proceedings from the Bhavnagar Court to the City Civil Court, Ahmedabad. The grounds urged in this application is also to the effect that the applicant is a deserted wife having no means of livelihood. Basing livelihood on a proceedings filed under sec. 125 of CrPC, a minor son who is recently started attending the school would be put to a grave hardship and inconvenience if the applicant is made to attend the court at Jamnagar from Baroda. It is

also submitted that the witnesses of the proceedings are from Baroda. It was also submitted that economically greater hardship will have to be suffered by the wife in comparison to the husband who is a businessman.

On the other hand, ld. advocate Miss Nirali B. Munshi for the opponent-husband contended that the hardship comparatively and extensively is likely to affect the husband as well if the matter is directed to be transferred because elder daughter aged 9 years is staying with husband and on each date she will have to be taken from Jamnagar to Baroda causing inconvenience in her study. The wife has never attended this HMP Proceedings at Jamnagar. On economic hardship, it was submitted that wife is running a beauty-parlour and she can afford to attend the court at Jamnagar. It was also submitted that she has filed a complaint in Jamnagar against the husband under sec. 498A of IPC and she would be require to attend those proceedings. It was also urged that Hindu Marriage Petition is now ripe up to the stage of recording evidence and could be disposed of even within 2 to 3 months if so directed. It was, therefore, urged that this application requires rejection.

Powers under sec. 24 of CPC is an extra-ordinary powers and must be exercised with an extreme caution and care. Ordinarily, when litigant has a statutory right to file and continue with the litigation at certain place by exercising these powers, such a right would be adversely abrogated. There must be undoubtedly compelling reasons to transfer the case from one court to other court.

At the same time, one must not forget that concept of conferment of territorial jurisdiction upon the court flows from a sound reasoning and that is convenience of litigants economical as well as environmental. The litigants may file and continue with the litigation at nearest place is the prime object of limiting and conferment of jurisdiction upon courts of law.

One cannot by any stretch of reasoning can say that convenience or inconvenience is not the ground for the transfer of litigation under sec. 24 of CPC. In the present case, if we scrutinise the facts as laid down and crystallised by the submissions of the ld. advocates of both the sides, it is clear that the wife is deserted since last two years. Law has provided salutary provision in the shape of sec. 125 of CrPC for the destitution of wife and children. It would be a matter of evidence whether wife has been deserted by the husband

or she has left the husband at her own volition. But prima-facie unchallenged aspect is that the wife is living separately from the husband with minor child at Baroda without sufficient means of livelihood. Parental home is not always a bliss to a deserted wife and when litigations crop up between the spouse, hardship mental as well as physical and economical will be to the deserted wife only. She will have to undergo unthinkable rigmaroles of life unlike husband. It should not be taken to mean that this Court has decided that the wife is without any sufficient means. This would be decided in respective proceedings. But prima-facie to push a deserted wife with minor child to attend the Hindu Marriage Petition proceedings in the facts and circumstances of this case, from Baroda to Jamnagar would be denying her to an opportunity to meet with the litigation with all possible means and assistance. Hardship and inconvenience of a party is a good ground for transfer of a case from one court to another court. Gravity of this ground must always be guaged with sensitivity and keeping in mind stark and hard reality of life. Balance of convenience must tilt in favour of wife even if the husband has a custody of a daughter aged about 9 years because husband can manage and take care for the daughter aged 9 years by all means available to him comparatively. We cannot expect that a deserted wife would cope up with all care which is required to be taken for the minor son aged 5 years and can attend the court at Jamnagar. IN this view of the matter, though the powers under sec. 24 of the CPC for the transfer of case must be exercised sparingly and carefully because the same abbreviates the statutory rights of a litigants but at the same time if in the proper cases the jurisdiction under sec. 24 of CPC is not invoked the litigant is likely to face injustice.

In this view of the mater, having regards to the above discussions, this application is required to be allowed and is hereby allowed. It is hereby directed that Hindu Marriage Petition No. 55 of 2001 pending before the Court of Civil Judge (SD), Jamnagar is hereby ordered to be transferred to the Court of Civil Judge (SD), Baroda for disposal according to law. Ld. Civil Judge (SD) Jamnagar is directed to immediately forward the Records and Proceedings of Hindu Marriage Petition No. 55 of 2001 to the ld. Civil Judge (SD), Baroda. Ld. Civil Judge (SD), Baroda shall register the said HMP and dispose of the same according to law so far as expeditiously as possible.

(J.R. VORA, J.)

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